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CORNELL UNIVERSITY

SCHOOL OF LAW

THE DEDICATION

OF

BOARDMAN HALL

AND THE

PRESENTATION

OF

THE MOAK LAW LIBRARY

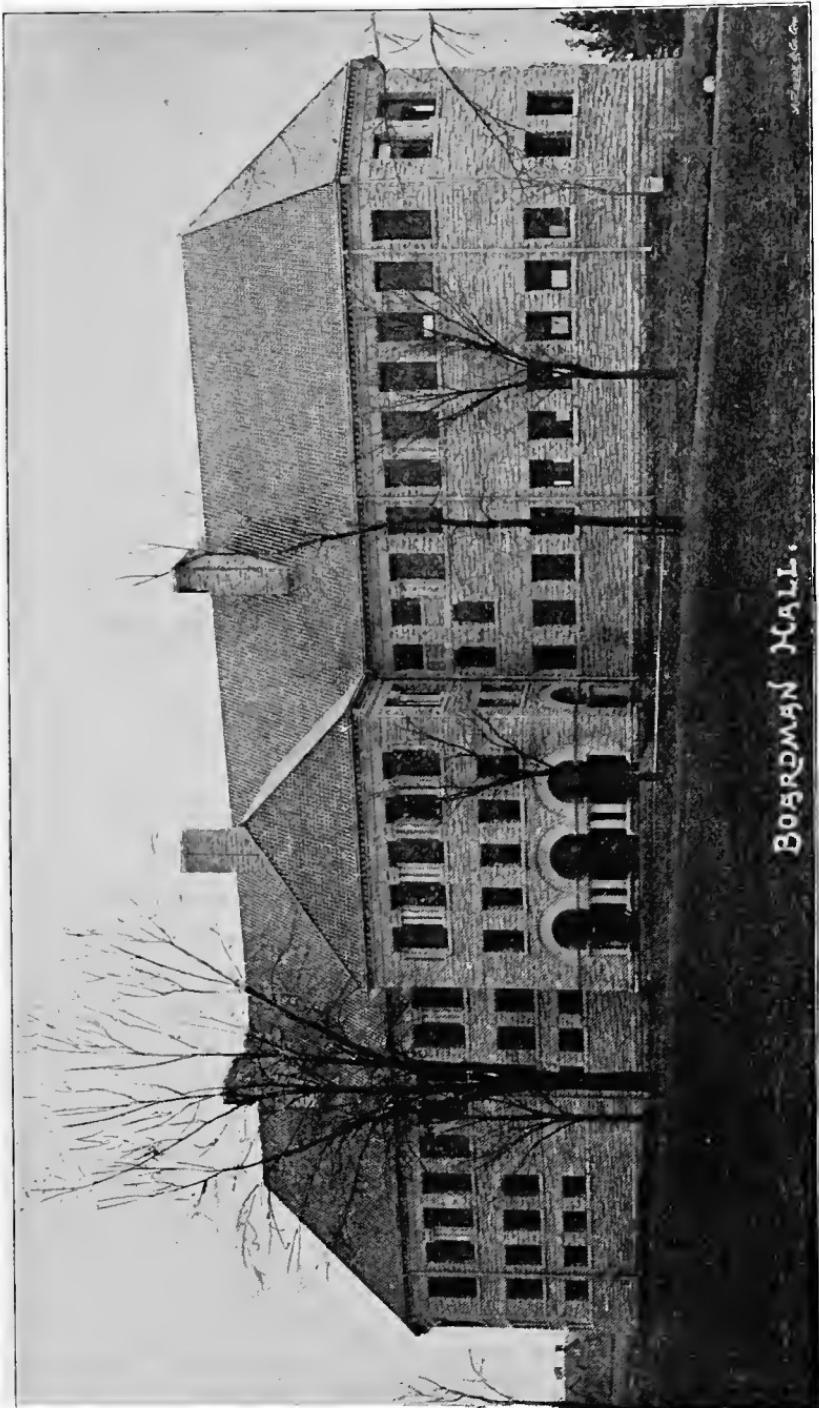
PROCEEDINGS AND ADDRESSES

FEBRUARY 14, 1893

ITHACA, N. Y.

PUBLISHED FOR THE UNIVERSITY

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BOARDMAN HALL.

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THE SCHOOL OF LAW

DEDICATION OF BOARDMAN HALL

AND

PRESENTATION OF THE MOAK LAW LIBRARY

At a meeting of the Trustees, held June 16, 1886, formal action was taken establishing a School of Law as a department of the University. The public were at once advised of the step, and that the School would be in readiness for the admission of students at the opening of the university year in 1887. The Faculty was chosen in March, 1887, and consisted of the following members: The Honorable Douglass Boardman, Dean, Harry B. Hutchins, Charles A. Collin, Francis M. Burdick, Moses Coit Tyler and Herbert Tuttle, resident professors, and the Honorable Francis M. Finch, the Honorable Daniel H. Chamberlain, the Honorable William F. Cogswell and the Honorable Theodore Bacon, special lecturers. At the June meeting of the Trustees, in 1891, Professor Charles E. Hughes was called to the professorship made vacant by the resignation of Professor Burdick, and the resident instructing corps enlarged by the election of Associate Professor William A. Finch. A vacancy in the Deanship, caused by the death

of the Honorable Douglass Boardman was filled in November, 1891, by the election of the Honorable Francis M. Finch. The *personnel* of the corps of special lecturers has changed somewhat from time to time, and at present is as follows: The Honorable Francis M. Finch, of the New York Court of Appeals, the Honorable Daniel H. Chamberlain, of the New York City Bar, the Honorable Alfred C. Coxe, of the United States District Court, the Honorable Albert H. Walker, of the Hartford Bar, Professor John Ordronaux, of the New York City Bar, the Honorable Irving G. Vann, of the New York Supreme Court, the Honorable Goodwin Brown, of the Albany Bar and the Honorable Irving Browne, of the Buffalo Bar.

The School opened September 23, 1887, with an attendance of fifty-five students. The subsequent growth has been such as to meet the expectations of the most sanguine. The enrolment of the present year is two hundred and five.

It was very soon apparent that the accommodations provided for the School in Morrill Hall, would not long be adequate, and that a separate building, to be devoted exclusively to its use, would be a necessity. In February, 1891, the Trustees made a liberal appropriation for this purpose. The building was soon under way, and although not entirely completed, was sufficiently far advanced to admit of its occupancy at the opening of the present university year. It is a large three story structure, the extreme dimensions being 202 by 58 feet, is built of Cleveland sandstone, and is practically fire-proof. The interior finish is largely in oak. On the first floor are three large lecture-rooms and the necessary halls and cloak-rooms. Seminary rooms and the offices of the several resident professors occupy the second floor, while the third is devoted to library purposes. Here are three large, well lighted and elegantly furnished library rooms, which have accommodations

for 30,000 volumes and 300 readers. The building is heated by steam and lighted by electricity, and is thoroughly well ventilated. It is now entirely finished, is complete throughout in all its appointments and furnishings, and is found to be admirably adapted for law-school purposes. The cost of the building with its furnishing was \$110,000.

The Trustees of the University, at a meeting held September 14, 1892, unanimously determined that, in view of the long and valuable services of the late Judge Douglass Boardman as a member of their body and of his official connection with the School of Law, the new home of the School should be designated as BOARDMAN HALL, and a committee was appointed to secure a suitable memorial tablet to be placed upon the building.

At the opening of the present university year, the library of the School consisted of about ten thousand volumes. The most of these had been purchased with appropriations made from time to time by the Trustees ; but the collection contained the law library of Judge Boardman, he having generously bequeathed it to the School. In October last, the large and carefully selected law library of the late Nathaniel C. Moak, of Albany, N. Y., was placed upon the market. It was known to be one of the most complete collections in the country. Its purchase was at once authorized for the use of the School and as a memorial to its first Dean, Judge Douglass Boardman, by his widow Mrs. A. M. Boardman and his daughter, Mrs. Ellen D. Williams. This collection, added to the original one, gives to this School a library of 23,000 volumes, and one which is second to none in the country.

Tuesday, the fourteenth of February, 1893, was the day fixed for the formal dedication of the new law-school building and for the presentation of the library so generously donated.

Invitations to the exercises had been sent to the State officers, to members of the State Judiciary, to prominent members of the bar and to the graduates of the School, and a large audience gathered to listen to the addresses. The ceremonies began at 3 o'clock P. M., the Hon. Henry W. Sage, of the Board of Trustees, presiding. The following was the

ORDER OF EXERCISES

Prayer, - - By the Rev. Mr. SYNNOTT

Music, - - THE CORNELL GLEE CLUB

Presentation of the Moak Law Library,

By the Honorable FRANCIS M. FINCH in behalf
of the donors, Mrs. A. M. BOARDMAN and
MRS. ELLEN D. WILLIAMS

Acceptance of the Gift, By President SCHURMAN

Music, - - THE CORNELL GLEE CLUB

Address, By The Honorable CHARLES ANDREWS,
Chief Judge of the New York Court of Appeals

Music, - - THE CORNELL GLEE CLUB

After the public exercises, Boardman Hall and the Moak Library were thrown open to the inspection of the public.

In the evening a general reception was given by the Law Faculty in Boardman Hall, which was largely attended.



Adar - Indian

ADDRESS OF HON. FRANCIS M. FINCH

PRESENTING THE

MOAK LAW LIBRARY TO CORNELL UNIVERSITY
IN BEHALF OF MRS. BOARDMAN AND
MRS. GEORGE R. WILLIAMS.

Mr. President and Gentlemen of the Board of Trustees :

I have been permitted to perform the duty, which it is a great pleasure to perform, of presenting to the University, for the use of its College of Law, the library of about twelve thousand volumes, collected by the late Nathaniel C. Moak, to be accepted and preserved as a memorial of Judge Douglass Boardman, the first Dean of this department, and as the gift of his widow and his daughter, Mrs. Boardman and Mrs. George R. Williams.

Even beyond the value of the gift is the grace of it ; for it came with a cheerful and happy freedom which waited for no one to persuade, and sought only the assurance that the gift was worthy of the purpose from which it sprang. It is hardly possible to overestimate its value. I know of but one or two collections in the land which are as perfect and complete. Beginning back in the shadows of the early centuries, when Bracton, whose true name is in dispute, and Fleta, by an author unknown, set growing in the bark and sap of the Saxon branches innumerable grafts from the older Roman law, and with the quaint and curious Year Books, couched in their barbarous Latin, and primitive Norman-French, the series of English reports comes down without a break to the present day. The concise and careful judgments of Hale, and the crabbed and technical reasoning of Coke ; the grand integrity

of Sir Thomas More, who thought that even Satan might have rights in a court of justice ; the constructive and conscientious genius of Nottingham, aided later by Somers and Cowper, and Hardwicke, who drew largely from the best thought of the Civilians ; the learning of Clarendon and the infamous brutality of Jeffreys ; the solid and marvelous wisdom of Mansfield, who saw his own library burn in an hour of riot and misrule ; the awkward and rude but irresistible logic of Eldon, who boasted that he would rather have law without literature than literature without law, contrasted with the opinions of Camden who had both, and to rare vigor of thought added richness of imagery and felicity of diction ; the smooth and plausible sentences of Loughborough, of whom Junius said with biting sarcasm,—“there is something about him which even treachery cannot trust ;”—the eloquence of Erskine, the impudence of Thurlow, and the wonderful genius of Bacon ; the learning of Denman, and sarcasm of Brougham, and industry of Campbell, historian of them all ; the early reporters,—Owen, and Noy, and Coke,—with their brief and crude notes of decisions ; the State Trials, beginning in 1163 with the arraignment of Becket, that Archbishop of Canterbury who ventured to question the religious supremacy of a not over-religious king, and passing on to their tragic and terrible stories of the blood through which liberty and justice waded to the shores of a higher civilization ; the Chancery volumes along the line of which one can trace the growing strength and courage with which Equity tempered the severities of the law ; the Colonial reports reflecting the thought and tone of the mother land, but coloring all with the new necessities of climate and situation and changes born of Canadian snows, the Australian bush and the customs of many islands ; all these are here, in orderly rank and array, and none are wanting at the call of the muster roll. And with them are massed the reports of that newer and younger life in our own land, gathered from every state in the Union, omitting none,—not one,—so that even the young Montana in the far northwest leaves her mines of silver in the mountains to build up justice in the new court house on their slopes. And the

newer law of the newer land need not blush for its work when to the judicial roll it has added three such names as those of Kent and Marshall and Story. And with all these, which garner up the whole legal knowledge and wisdom of the English speaking race, are commentaries and text-books without number, discussing all phases of jurisprudence and all forms of adjudication ; so that it may be truthfully said of the gift which these ladies make to you to-day, that no authority will ever be cited, no case will ever be referred to, no existing doctrine will ever be asserted which cannot at once be verified in the library thus added to your treasures.

And this remarkable collection was the work of one patient and industrious lawyer, the brief story of whose life has lessons for us all.

Nathaniel C. Moak was born at Sharon in this state in 1833. The boy on his father's farm worked in the fields in summer, but studied with an early thirst for knowledge in the district schools through the winters. With the scant earnings of his industry he at last gained a few years of academic preparation, and then beginning the study of law was soon after admitted to the bar. Practicing first at Cherry Valley and later at Oneonta, he finally moved to Albany, and built up there a large and lucrative practice which absorbed the most of his life. His great strength and pronounced success lay in his marvellous and unflagging industry. I never knew such a lover of work. Every case he tried, every appeal he argued, manifested the completeness and thoroughness of his study. His preparations for a struggle were as broad and patient, as endless and far-sighted, in their humbler way, as those of the great Field Marshal who led the German armies to the capital of France. Brilliant he was not. Brilliance I think he despised. Brusque and abrupt and even sometimes rough in his speech ; with a voice metallic and resonant and scorning all modulations ; hating what was false and mean with a temper that had some dynamite in it ; with a frame heavy and solid and almost massive in its structure ; a born fighter at the bar and fearless of all adversaries ; one would hardly have picked

him out as the gentle student, dearly loving his books. And yet that he surely was. How early he began to gather them about him I do not know, but year by year the fruit of his industry and energy, in volume after volume, in choice editions and rare selections, crept along the shelves of his office and those of his library at home until his partners and his wife envied him the room which his favorites absorbed. And this busy man put his chief fortune not into law books alone. Thousands of volumes of history and biography, of science and philosophy, of fiction and poetry, of the drama and of art, were steadily amassed, and as steadily read and studied. And with use of it all he began the work of author and annotator, and wore his life out in the labor he loved. His books were his friends. There are none more faithful and true, and he loved them dearly and guarded them well. I missed him at last from the bar before me, and learned that the end had come ; and soon after stood among his books with some of his own love for them, with a longing that seemed doomed never to get beyond longing, and turned away hopeless and dismayed, when there flashed along the wire a message from these two ladies, whose servant to-day I am, authorizing an immediate purchase for the use of this School of Law and as a memorial of its first Dean, Judge Douglass Boardman.

I have spoken of him before. It is fitting that I speak of him again. Though he took but a moderate part in the routine of instruction, what he did was like all that he did, thorough and accurate and sound ; and beyond that his interest in the work and prosperity of the school was unsleeping and untiring. I am not permitted to say how often in his quiet and reticent way he bore burdens for which his resources were insufficient, nor how well I know that in that far land where he awaits us in our turn, he looks down upon this day's work with pleased approval. A sound and solid lawyer, a patient and impartial and thoroughly upright judge, careful and wise in all the business of life, a truthful and faithful friend, with courage if need be to warn or reprove, steadfast and firm and far-sighted in the councils of the University, modest to a fault

and always underrating an ability which never failed or bent under any responsibility, he left us when it was hard to spare his useful and generous service, but comes back to us in those whom he left behind, and who have taken up his work in love and respect for his memory.

If I knew of some unperishing amber, pure enough and fragrant enough and transparent enough to enclose their names beyond the dust and destruction of Time, I should hang it among these books to keep the remembrance forever. I think I have found it; am sure I have found it, in the memories of the young for whom this Library is designed, in their gratitude born of its daily use, in the lessons they will learn, in the good they will gather, in the growth they will attain, in the work they will do, in the victories they will win.

And so, with thankfulness and gratitude to the givers, I make to you the formal gift which they permit me thus to complete. I give you the title to the Library, the manuscript catalogue of its collector, and the key which unlocks it for its intended use. May it please you, Mr. President, to accept the gift.

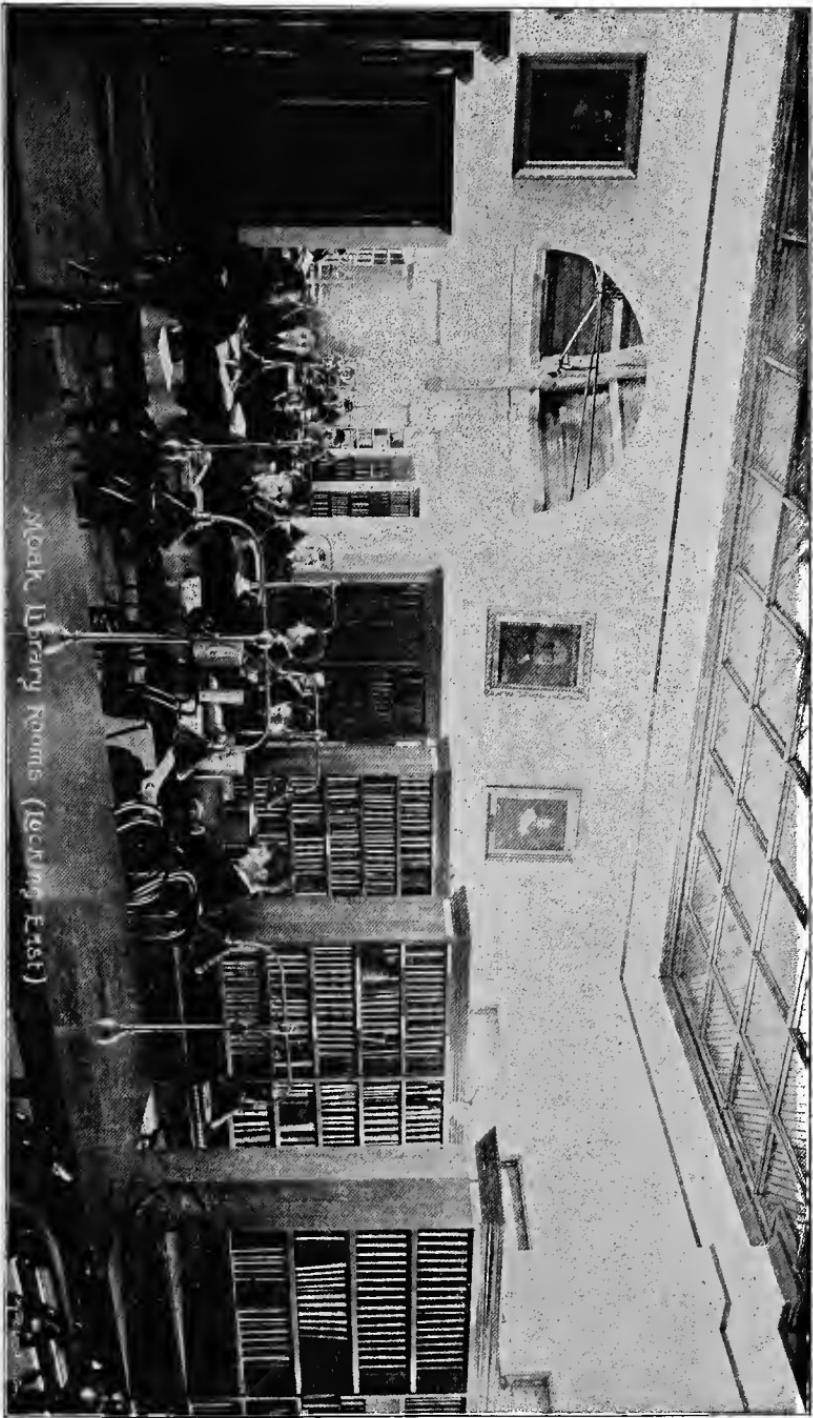
ADDRESS OF PRESIDENT SCHURMAN

IN

ACCEPTING THE GIFT OF THE MOAK LIBRARY.

It gives me great pleasure to accept on behalf of the University the noble library which in the name of the donors Judge Finch has just formally presented for the use of the School of Law. Speaking only from the point of view of the University and without invading the personal sphere of friendship or of social ties, I recognize the special appropriateness of Judge Finch being the spokesman on this gratifying occasion. I do not allude to the fact that he was the friend of the founder and co-operated with him in the establishment of this University with a heartiness, a devotion, and a degree of efficiency which have placed his name high in the roll of our best friends. I have in mind rather his appearance at the opening of the University on that autumn day of 1868. For the representative of our latest benefactors was also the representative of that gracious lady who, at the nativity of the institution, offered the first gift. The undying fragrance of the memory of Jennie McGraw comes to me now like a sweet incense tempering us to the present celebration.

Once more the heart of woman has felt the needs of the University and the hand of woman has made provision for them. The benefaction comes at a most opportune moment. It follows close upon the completion of the new building which the prosperity of the School of Law has made necessary, and which to-day we formally dedicate. In the interval however, there was time for one important occurrence. The trustees, mindful of the devoted and valuable services which, both as a trustee and as Dean of the School of Law, the late Judge Boardman had rendered to the University, had resolved by a



Meak Library rooms (Beijing-East)

unanimous vote that the new home of the school should be designated BOARDMAN HALL. [*great applause*] This designation is now for the first time officially announced ; and the satisfaction you express shows that the trustees in fixing the name, merely anticipated the desire of all the members of the Law School and indeed of the University. But how much our pleasure has been heightened by the subsequent action of Judge Boardman's heirs ! Not long after they had been notified of the designation of the new building, it was announced that the unique library of the distinguished jurist, whom the bar of New York had just lost, was to be put upon the market. With a spontaneity born of deep affection and of ready insight and with a promptitude that outran all competitors the library was purchased, and presented to the University, almost before the trustees of the University had heard of its existence, through the bounty of Mrs. Boardman and her daughter, Mrs. George R. Williams. For their munificent and most timely gift I desire to extend to them the sincere and grateful acknowledgments of the University,—and not only of its present members, but of the innumerable throng of students whose minds this gift will train and nourish in all the coming generations.

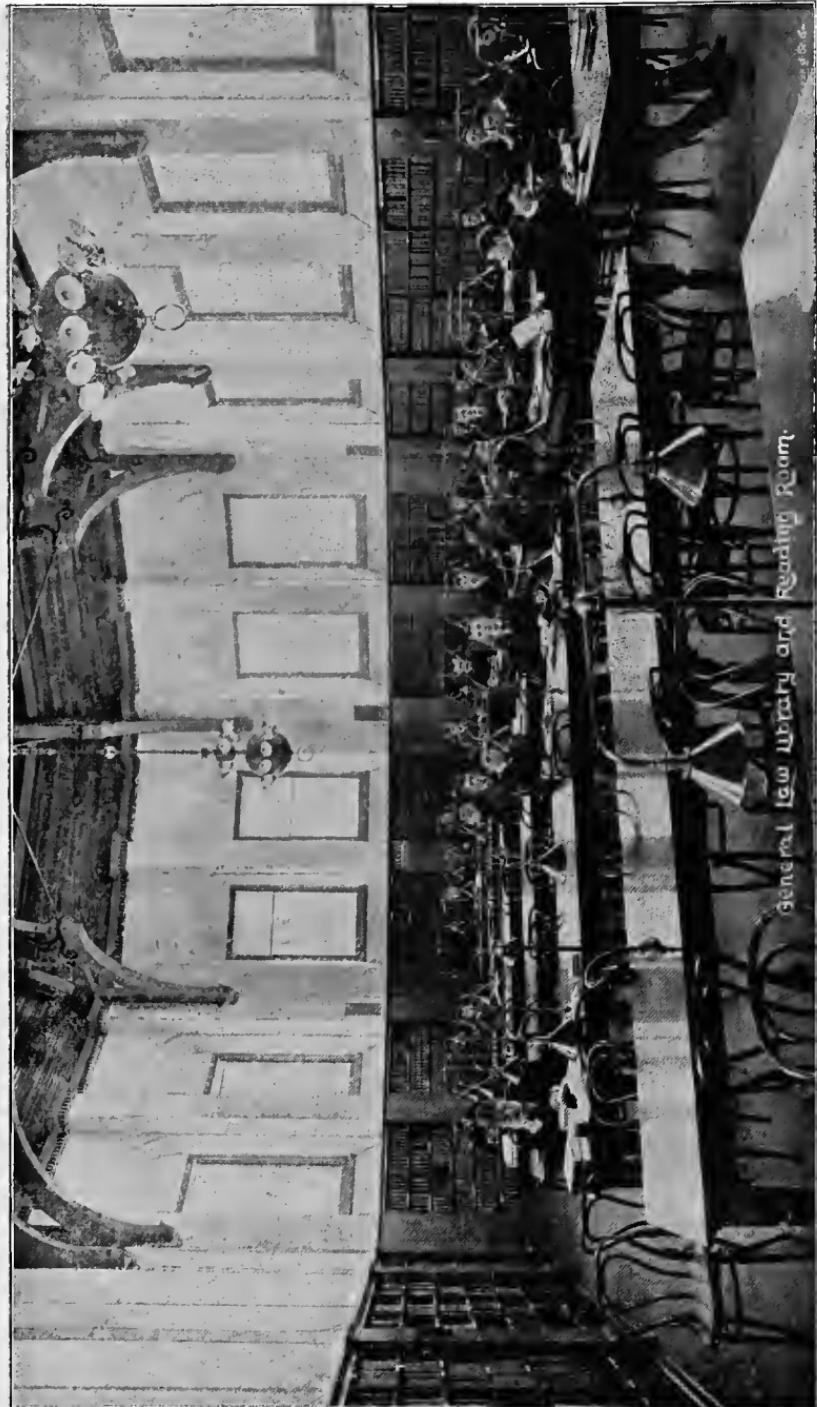
And yet the best way of showing our gratitude is to accomplish the end designed by the gracious ladies who have made this benefaction. Nor is there any doubt in regard to the character of their aim. In the letter to me, announcing the gift, Mr. George R. Williams stated that the object was "*to make good lawyers of noble men.*" By these books all who use them are consecrated to high aims in life and excellency in their profession. Law is the embodiment of the practical wisdom and conscience of mankind. Let no man profane this noble collection of legal works who thinks meanly of human life or of the institutions of justice by which society is regulated. On the other hand this library stands open to all good men and true who see in the law a subject of serious study.

And what a library it is ! A monument to the erudition and devotion, the patient purpose and the wise prodigality of the distinguished jurist who formed it, the Moak collection,

with its splendid wealth of reports, statutes, periodicals, and text-books, not only doubles the number of volumes on our shelves, but makes the Cornell Law Library one of the fullest and most complete in the world. A competent expert, who watched and even aided Mr. Moak in collecting his books, and who knows thoroughly what they are, is authority for the assertion "That there is no case cited by a lawyer in his brief or by a judge in his opinion, in any court of Great Britain or America, which cannot be verified in the Moak library."

This noble gift will make the work of the Law School more effective than ever.

There are many reasons why this School must be among the foremost in the country. An organic part of this great University which is situated in the centre of the state of New York ; away from the distractions of courts and offices, which are a positive hindrance during the period of study ; in charge of a strong faculty whose aim is to teach the principles of law and how to apply them—and that by a method which careless of the name of any man or of any school is careful only to be pedagogically sound,—it is no wonder that the attendance has grown during the five years of its existence from fifty-five to two hundred students, nor is it a matter of doubt that with our greatly improved facilities the numbers will increase still more rapidly in the future. I think it entirely within the mark to say that we are likely to have 500 students of law before the close of the century. But Boardman Hall, which we now formally dedicate, will accommodate them ; and the Moak library, which we now formally accept, will serve to instruct them—them and their successors, so long as the building and the books endure. For this present consummation and for that greater future, I voice our thanks to all who have contributed to their coming, but most of all, as is fitting, to the gracious ladies who have inspired the proceedings of this day, the generous benefactors whose deed the University will hold in enduring remembrance and whose names we now hail with grateful approbation—Mrs. Boardman and Mrs. George R. Williams.



General Law Library and Reading Room.

ADDRESS OF HON. CHARLES ANDREWS.

INFLUENCE OF AMERICA ON JURISPRUDENCE.

Mr. Chairman, Ladies and Gentlemen :

This is a notable occasion in the life of this University. The dedication of the new law building and its large library to the Science of Jurisprudence, that department of human learning, the history of which is the history of civilization itself, which connects itself more nearly than any other with pervading human interests, in that it relates to the security and preservation of those civil, political and personal rights most dear to every individual in the community, which marks in its gradual advance the progress of society, which has its basis in the laws and institutions which regulate the relations of the State to the citizen and of citizens to each other, and the mutual rights and obligations of independent nations, the dedication of such a foundation to the study of this important, practical and deeply interesting science justly attracts the interest of intelligent people and marks a step by Cornell University towards the realization of the purpose of its wise founder to "found an institution where any person can find instruction in any study." I have read very recently the report of a Committee of the Board of Trustees, made to that body in June, 1886, recommending the establishment of a Law Department. It sets forth in detail the reasons which in the opinion of the Committee justified the establishment of a law school in this section of the state. What struck me most forcibly, in view of the present, was the evident anxiety manifested as to the ways and means by which the new department could be carried along during its early years, which it was assumed would be years of struggle to meet the necessary conditions of its existence, and during which it was thought it could expect little in-

come and would be a drain upon the resources of the University. It was suggested that some unused rooms in one of the existing buildings could be adapted for lectures, and some rooms then occupied as dormitories could be fitted over for the "King Library," as it was called, small, but adequate as the Committee thought, and as to the financial problem the Committee expressed the hope that by the tuition fees, supplemented by a comparatively small appropriation from the University funds, the department could maintain its existence. The magnificent result of this tentative movement attests the wisdom and foresight of its projectors and is another illustration that a broad and courageous policy, looking towards the completeness of the University system, is quite sure to be justified in the interest it creates and the material support it gathers in directions which may not have been anticipated. This building with its large, complete and valuable library, the gift of tender and thoughtful affection, the crowded class room and the constantly growing interest in this department of University work, is an ample vindication of the project of 1886.

The laws and jurisprudence of a state reflect with great distinctness the moral, social and economical condition of the people, and is one of the most fruitful aids in historical investigation. They form the most material and instructive portions of its history. The law, and the science which treats of it are indissolubly connected, in every government based upon written and unwritten rules prescribing the power of the state and the duties, obligations and rights of its citizens, in short where, as expressed in the noble language of the preamble to the Constitution of Massachusetts, the government is "one of laws, and not of men." The law is the formulated rule, supplemented by the rules regulating civil obligations, recognized by common consent or general usage, having the force of written law. It is the ligament which binds society together. It is traced in the first attempts at organized society. Without it there could be no social order, no adjustment of relative or personal rights according to a fixed standard, no security for family or property, no opportunity for the develop-

ment of the graces and courtesies of life, no progress towards higher ideals in the social, intellectual and moral conditions of the race. Liberty regulated and restrained by law is the great acquisition of the later centuries, and the most notable and hopeful fact in modern civilization. The general rule that the laws and jurisprudence of a people are an index to their character and spirit, is more especially true in states where the people are closely connected with the framing of their institutions and the making of the laws by which they are governed. In these, their natural tendencies and the spirit which animates them, the value they place on civil and political rights, and their moral and mental characteristics are most distinctly reflected. They take shape and color from the character of the people and the influences and motives which impelled and guided their action. When you become acquainted with the institutions and laws of such a people, you know the value they put upon human rights, the sacrifices they were willing to incur to secure them, and how far in framing them they comprehended those principles of immutable justice which are the only true basis of government.

The history of the origin and development of the institutions, laws and jurisprudence of the United States, forms one of the most important chapters of human history. The cognate question as to the influence of America upon jurisprudence, and as to how far and in what directions it has influenced the laws and jurisprudence of other nations, and whether this influence is to broaden and to become more potential with the advance of America in learning, wealth, commerce and population, opens a most interesting field of inquiry. To some of the phases in our legal and judicial history I shall briefly allude.

The men who framed the Constitution of the United States were for the most part lawyers. They were not unacquainted with the history of governments, and were familiar with the struggles of peoples against the arbitrary power of rulers, and they knew the necessity of establishing the fundamental principles of liberty in the framework of the state. They had asserted on the occasion of the final rupture with Great

Britain the right of a people in extremity to overthrow a government which failed to protect them, "and to institute a new government, laying its foundations on such principles and organizing its powers in such form as to them shall seem most likely to secure their safety and happiness." They were the men who had guided the colonies through the stormy period which preceded the revolution. The discussions and conflicts of that time had made the people familiar with questions pertaining to the rightful functions of civil government, and had hardened into fixed determination, the purpose, that arbitrary power should no longer dispose of their lives and liberties. It is but simple justice to say that the lawyers of the ante-revolutionary period were the leaders of the people in the assertion of the rights of the colonies against English pretensions to govern them by parliament without representation, or to make fundamental rights depend upon the caprice or will of the sovereign. They constituted the learned and influential class. They inspired the popular movement. They put in words the discontent which pervaded the public mind. That series of addresses and protests to the English government, which extorted the admiration of English statesmen, was their work, and when the actual conflict came, they left their offices and homes, and shared the perils of the camp and of the field. It was a work inspired by the loftiest patriotism and worthy of the noblest ambition. It was nothing less than the work of creating a state and laying the foundations of government for a hemisphere. The influence of lawyers as a rule, has in all governments been on the side of progress and civil liberty. They have usually been obstacles to tyranny and oppression. They created that written system of law, which regulated public and private rights on the continent of Europe from the time of Justinian, and the Code, the Pandects and the Institutes are their imperishable monuments. Both the bench and the bar share in the just claim that the influence of lawyers as a class, has been on the side of human liberty, against arbitrary power. There have been many exceptions. Meanness, servility and self-seeking are confined exclusively to no class, and

in each they have their representatives. But the atmosphere which surrounds lawyers, the nature of their studies and their constant dealing with human rights and interests, in view of the demands of abstract justice, has an elevating influence. It tends to make lawyers sensitive to infractions of personal liberty and to make judges independent and just. The contrast is striking between the servility of Coke, as attorney general, and his fearlessness and independence as a judge. As law officer of the Crown, he lent himself and the influence of his office to aid the King in his arbitrary measures ; as judge, he resisted the abuse of prerogative and finally was dismissed for his uncompromising assertion of the rights of the people against tyrannical and arbitrary invasion.

The Convention which framed the Constitution of the United States had the problem before it of adjusting existing conditions to the necessity of a stronger national and central authority. The autonomy of the States was to be preserved, but there could be no nation without a national authority which should be supreme within the sphere of its operations, and to constitute such authority it was essential that powers affecting the common, general and external interests of all the States, should be vested in the general government. How this was accomplished, and how the jealousies of the states were allayed and a final conclusion reached by the convention, is familiar to every student of our history. It was assumed that in framing the national system the powers of the government should be divided into separate, independent, departments. This was necessary to its preservation and stability. The members of the convention understood the importance of this principle. It had been pointed out by Montesquieu : ‘‘When (he says) the legislative and executive powers are united in the same person or in the same body of magistrates, there can be no liberty ; because apprehensions may arise lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject

would be exposed to arbitrary control; for the judge would then be the legislator. Were it joined to the executive power the judge might behave with violence and oppression." This threefold division in the English system they knew and appreciated. The convention therefore by the Constitution vested the powers of government in three departments, Legislative, Executive and Judicial, according to the English model.

The establishment of the judicial department was provided for in the third article and in very brief terms: "the judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish." It was provided that the tenure of the judges should continue during good behavior, and that their compensation should not be diminished during their continuance in office. The third section of this article defined the cases to which the judicial power should extend. Among others and foremost in the enumeration were "all cases in law and equity arising under the Constitution, the laws of the United States and treaties made or which shall be made under their authority," and afterwards was another specification of "controversies between two or more states." The powers conferred upon the Supreme Court of the United States under these two specifications, have made it a most powerful factor in the development of the Constitution, and the most august and dignified judicial tribunal in the civilized world. It is very doubtful if the scope of the power conferred on the Supreme Court by the first specification in the section had been fully appreciated and understood at the time, the Constitution would even have been adopted, and yet scarcely any provision in that instrument was more vital to the success of the new scheme of government. The United States Constitution was the first experiment on a large scale in the history of governments, to establish and define by an organic written law the scope and limitations of sovereign power, and to bound by prescribed lines legislative, executive and judicial functions. It declared that that instrument, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which

shall be made under the authority of the United States, shall be the supreme law of the land. In England parliament is the supreme and dominant power and the uncontrollable authority in legislation. The laws enacted by parliament are subject to no revision, and the only security for private rights against oppressive legislation, rests in the wisdom of that body and its recognition of the principles of personal liberty, which have come after many embittered contests to be regarded as the birth-rights of Englishmen. The judiciary of England can not set aside or disregard an act of parliament, however much it may seem to conflict with natural justice or constitutional principles.

In the great case of *Marbury v. Madison*, which came before the Supreme Court of the United States in 1803, that court made the first authoritative announcement of the principle which has now become one of the fundamental doctrines in American Constitutional law, that the court has the right and power and that it is its duty whenever the matter comes judicially in question, to declare null and void an act of Congress in violation of the Constitution. Chief Justice Marshall in a calm, luminous and powerful opinion, set forth the grounds of this conclusion, basing it on the grant of judicial power to which we have referred, and upon the declaration in the Constitution itself, making it Supreme law. It was a startling assertion of judicial power, transcending any which had ever been exercised by the judiciary of any government outside of the United States. In its possible scope it subjected every act of Congress to the scrutiny of the court and to its practical annulment whenever invoked by a party to a judicial proceeding and relied upon to sustain a claim or a defense.

It is scarcely too much to say that if the court had faltered here, the work of the convention would have failed. There would have been no check on unconstitutional legislation. Congress, influenced by the violence of faction or party spirit, or by the sway of passion or prejudice, would have usurped from time to time the power reserved to the states, and overstepped the limitations of the Constitution, and the states denuded of their rightful powers, would have resisted the

usurpation, and anarchy would have resulted. All history attests the fact that unrestrained power will be abused. For a time Congress would have been influenced by a regard for the Constitution, but the sentiment would have weakened with the lapse of time and the line between permitted and excluded powers would have been effaced. The real security against unconstitutional legislation is found, not in the limitations of the Constitution, but in the fact of the existence of an independent body clothed with the function of measuring the validity of legislation by the test of the Constitution.

Another great constitutional question came before the court in the case of *Fletcher v. Peck*, decided in 1810, in which the court declared the principle that state laws repugnant to the Federal Constitution were void. This principle was complementary to that decided in *Marbury v. Madison*. Together they established the supremacy of the Federal Constitution and the invalidity of legislation, whether by Congress or by the states, which transcended the limitations or violated the rights secured by that instrument. The court, while it asserted with dignity and firmness, its prerogative as the guardian of the Constitution, with great wisdom declined to entertain jurisdiction to control or interfere with the other departments of the government, in matters exclusively of a political, executive or legislative character. At the same time, it carefully upheld and vindicated the sovereignty of the states and their exclusive right to interpret and enforce their own constitutions and laws, where they did not involve any conflict with the Constitution of the United States. It was very fortunate that in the early period of the court there was no pressure of business to prevent the most complete argument and consideration of the great questions of Constitutional law which came before it. The thirty-four years during which Chief Justice Marshall presided, were those in which the character of the Constitution was indelibly fixed by the interpretation of the court. The opinions of that great magistrate during this period did more, I think, to cement and perfect the union of the states and make the United States a nation, than all other causes combined. Pos-

sessing an intellect remarkable for the amplitude of its grasp ; an almost intuitive knowledge of the spirit of the Constitution ; a power of comprehending the conditions upon which the Union could alone be perpetuated ; these, united with a lofty character and the purest patriotism, and the faculty of clear and powerful statement, eminently fitted him to become the interpreter of that instrument. I suppose that less than thirty opinions embody the substantial work of Chief Justice Marshall upon questions of Constitutional law. But they cover the whole range of topics. Upon these few opinions rest the reputation of this great judge and his enduring fame. It was under his guidance that the court became what has been aptly termed the "living voice of the Constitution," and to him more than any one else it is due that the Constitution seems likely to work out the design of its framers, as expressed in the striking aphorism of Chief Justice Chase, "to create an indestructible union of indestructible states." The same principle of the supremacy of the Constitution over the laws, enforced by the Supreme Court of the United States with reference to the Federal Constitution, has been applied by the state courts with reference to the state constitutions, and no one now questions the soundness of the principle, although when first announced it met with strong opposition.

It has been said that the growth and authority of the judiciary of the states and of the United States, is one of the remarkable features of the American system of government. It is not difficult I think to trace the cause. It is owing in a great degree to the fact that the judiciary is clothed with a power unknown in other countries, the power to set aside and disregard acts of the legislative body transcending the limitations of the constitution, when interposed to affect private rights. The people have come to regard the courts as the final custodian of their liberties. In no other land do the mass of citizens so well understand in what political and civil liberty consists, or what their infractions by power portends. These great themes are discussed not only at the bar, but in the market place, in public assemblies and at the fireside. They

have come to understand the dangers which attend legislation and the importance of the judiciary as a check upon legislative usurpation, and they look to the courts as the final arbiter and judge, and hitherto their confidence has not been betrayed. A potent element also in the growth of the influence of the Federal judiciary, and which invests it with an unexampled dignity, is to be found in the second specification of its powers, to which we have referred, the power to implead sovereign states at its bar to adjust disputes which in other countries have been the occasion of bloody and devastating wars. Under this power the court has on several occasions settled questions of boundaries and territorial jurisdiction, and its decisions, incapable of enforcement except by their moral power, have been accepted by the interested states as authoritative and final. If the time shall ever come when the nations of the earth shall by common consent come to adopt the principle of arbitration in the settlement of international differences, it will be owing, I am sure, in no small measure to the example set by the Constitution of the United States. Civilization has achieved no greater triumph in this century than it witnessed when the two great nations of the English speaking race determined in this way one of the most irritating controversies which could arise to disturb the peace of nations.

The influence of New York upon American jurisprudence has been most potential. The spirit of free institutions pervaded the legislation of New York during the colonial period to a greater extent I think than in any of the colonies. The institutions of Holland were, during the Dutch occupation, the example upon which the customs and laws of the colony were founded, and it cannot be denied that they were permeated with the free spirit of personal and political liberty. A recent writer whose brilliant work is a credit to our literature, finds in the laws and institutions of Holland the germs of all which, as now understood, constitutes civil liberty. He perhaps may overstate the case and fail to adequately recognize the influence of England in the development of free institutions through the constant struggle which from the time of Magna Charta

was maintained between the people and the crown. But it is unquestionably true that the Dutch laws greatly influenced the spirit of the legislation of New York after the surrender of 1664, and during its subsequent colonial history. The principle of religious toleration was recognized to a greater extent than in any other colony with perhaps a single exception. The right of a people to a voice in the making of the laws, was asserted and generally maintained. The convention which framed the first constitution of the state formulated the principles of free government, and among other things it declared in memorable phrase, which has been preserved in the subsequent constitutions of the state, the principle of religious freedom : "This convention doth further, in the name and by the authority of the good people of this state, ordain, determine and declare that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this state, to all mankind."

The constitution of 1777 did not create a Supreme Court, but assumed its existence. The judges who exercised the judicial office under the state government during the first half century of its existence, and who shaped its jurisprudence during that period, were men of distinguished character and ability. Among them is a venerable name, whose fame as a jurist is known throughout the civilized world. The importance of New York, its large and rapidly growing population, its commercial supremacy and increasing wealth, contributed to give the state great prominence, and the decisions of its courts of law and equity, were to a large extent followed as precedents by the courts in the other, and especially in the newer states. It is not I think too much to say that the influence of New York upon the jurisprudence of America has far exceeded that of any other state in the Union.

Not less marked has been its influence in moulding the legislation of other states. This has been largely due to the great work of constructive legislation known as the Revised Statutes of 1830, which is the most important and successful

undertaking in codification ever accomplished in this country or England. The revision was an attempt to arrange into one systematic body, the statutory law of the state, found in a multitude of statutes, enacted from time to time during a period of fifty years, regulating public and private rights, the relations of government to citizens and of citizens to the state and to each other. There was a further and most important purpose: to prescribe the nature and limitations of estates in land, and to abrogate the confused and complex rules of the common law of real property, unsuited to our condition, and to simplify the procedure and practice by which rights should be ascertained and adjusted. It was a work of great difficulty and delicacy. The statutes were full of inaccuracies and inconsistencies, and were simplified and rewritten. How to accomplish the radical changes proposed in the rules relating to land, without invading any essential right of property was a difficult problem. The state was most fortunate in the character of the men to whom the work of the revision was intrusted. They brought to the discharge of their duties trained abilities, great learning and industry, and while they had the conservatism which belongs to their profession, they had at the same time an intelligent comprehension of the state of the existing law and the changes required. They knew that while technical rules, sometimes operate to preserve the substance of justice, that more frequently they are used to delay or defeat it. They limited the changes proposed to the strict purpose of a Code, the amendment of the law in respect of those things in which it had been found that amendment was needed. They did not undertake to formulate in the revision the rules of the unwritten law. It is a somewhat cynical remark of Gibbon, referring to the edict of Justinian forbidding any commentary or glossary upon the Pandects or the Code, that "it is usually the first care of a reformer to prevent any further reformation." The revisers left the law as they found it, only interposing to remedy acknowledged defects. They left untouched the great domain of the unwritten law, and its development and improvement to the processes of gradual growth and adaptation by circum-

stances, to which it owed its origin. I consider the work of the revision entitled to rank among the great achievements of the human intellect in legal science. Whether you regard the manner of its execution, the completeness and accuracy of its definitions, the methods devised for bringing the rules of property into harmony with existing conditions, without disturbing established rights, and disengaging them from the subtleties and complexities in which they were involved by the devices adopted by the English judges in the effort to free property from the fetters of feudal tenures, the revision stands in its spirit and substance among the great Codes in the history of the world. The Revised Statutes became the model upon which a large number of states framed their system of statutory law, and the laws governing property and personal rights in the other States in the Union have been largely influenced by the laws of New York as contained in the revision.

The reference made to the influence exerted by the state of New York upon jurisprudence, would be quite incomplete unless notice is taken of the system of revised procedure now prevailing in most of the states of the Union, and to a considerable extent in England, which originated in this state, and was the immediate outcome of the changes in the judicial system of the state made by the constitution of 1846. The abrogation of the separate jurisdictions of law and equity by that constitution, and the provision for the appointment of Commissioners to revise, reform, simplify and abridge the rules of practice, pleadings, forms and proceedings of courts of record, opened the way for the most important and radical change in the procedure of courts known in the history of the law. The Code of Procedure of 1848, swept away the whole system of special pleading, with its complicated and technical forms and the practice based thereon, and undertook to reduce pleadings in actions to a plain assertion on the one side of the right claimed, and on the other of the defence. It is not my purpose to enter into any comparison of the two systems. I may say without undertaking at this time to justify my opinion, that on the whole a most beneficial change in the interest of justice,

was wrought by the substitution of the new procedure. My present purpose is to call attention to the wide influence which the example of New York has had in other jurisdictions. The Code of 1848 has been adopted as the basis of similar Codes in a majority of the states of the Union, and of the reforms in the law of procedure in England under the English Judicature Act of 1873, and other English statutes of earlier date. It is but just to say that to a distinguished member of the bar of New York, one of a distinguished family, is mainly due the conception and final adoption by this state of the new system of procedure. It is permitted to but few men to make as permanent a mark upon the jurisprudence of their time, as has been made by the author of the Code of 1848.

With us the substance of civil liberty is endangered in two directions. The intense struggle in American society for the accumulation of wealth is encouraged by favorable conditions, unknown to any similar extent in any other country, and stimulated by the irrepressible energy of our people. Material progress is the absorbing aim which dominates individual life. We point with pardonable pride to our growing influence as a nation and the advancement of our people in these material conditions upon which the prosperity of a state is doubtless largely dependent. The struggle of modern life to obtain the mastery of the forces of nature and subordinate them to the uses of man, has been developed here as nowhere else. Our railroads span the continent. The voice of a friend in New York may be heard in San Francisco as though speaking face to face. Business interests of immense magnitude in every department of industry have been developed, commanding practically unlimited capital for their prosecution. Wealth has largely accumulated and is seeking by consolidation to control every department of industry, the tendency of which is to divide the people into two classes—the employers and the employed and to perpetuate this division. It would be indeed unfortunate if the process should continue so far that this tendency should become fixed in the social condition of America. The best security for the permanence of this government is

that condition of social order which shall encourage the freest play of individual activity and offer the best opportunities for honorable and remunerative industry. Strike out the great class of happy and contented citizens, able to earn an honest and honorable living by their labor, with a reasonable prospect by industry and frugality, of becoming in time the possessors of a competence, and you remove one of the great securities of the Republic. It is a problem of constantly growing importance, how far the concentration of business in the hands of corporations should be left without restraint, and whether the tendency to absorb the business of any one department of industry into a single corporation, and placing it under a single control, creating a practical monopoly, should be permitted to go on unchecked by legislation. The largest freedom of action and of contract consistent with the public safety, is of the essence of civil liberty, but social and economic conditions which repress individual liberty and take away the stimulus and opportunity from the mass of citizens to better their condition, may justify legislative action, and such legislation may not be inconsistent with sound principles of government.

The other danger lies in a directly opposite direction. It is, that organized disorder, may receive such encouragement as to imperil the integrity of civil liberty. Every student of American constitutional history will remember the opposition made in some of the states, especially in Virginia, to the adoption of the Constitution, because it omitted a bill of rights, and that it was only because a speedy amendment was expected that their assent was obtained. It is a curious fact in the history of the evolution of opinion, that the bill of rights was then insisted upon as a protection to the people against the danger of executive or legislative usurpation. But now that declaration in the Constitution of fundamental principles is regarded of more importance as a check upon the inconsiderate and unconstitutional demands of the people themselves. It was forcibly and justly urged when the adoption of the Constitution was under debate, that it was of great importance that the fundamental rights of persons and property, the recognition

of which by governments has been one of the slow but rich conquests of civilization, should be set forth and declared in the organic law, as the unchangeable heritage of the citizen, in order that those exercising public powers might be constantly reminded of their existence and have no pretext for their violation.

In my judgment America has rendered no more important service to the cause of civil liberty through the world, than has resulted from its system of written constitutions, fixing and declaring on the one hand the powers of government, and on the other the inalienable rights of citizens. It has tended to draw the attention of people everywhere to the fact that undefined or arbitrary power is inconsistent with civil liberty, and that the paramount interest of society lies in the maintenance and preservation of individual freedom, restrained only so far as is necessary for the maintenance of public order, or to enforce a due regard for common and mutual rights. We have passed the period of permanent danger from usurped authority by the legislative or executive branches of the government. But are the fundamental rights of persons and property thereby permanently secured? Are there no dangers to the body politic from the play of the interests and the passions of the large body of the people, invested with the suffrage, who without property themselves, look upon the possessor of property as an enemy of society, and who demand as a natural right a share in the accumulations of others? Is there no danger from these combinations which seek by organization to control that healthful liberty of action which is the substance of personal freedom, that liberty, through the operation of which this country has become above all others distinguished as the home of a prosperous people, large numbers of whom have by thrift and industry raised themselves from penury and dependence to a position of comfort and influence.

This is not the place to enter into a discussion of the social problems which are pressing upon the attention of thoughtful men. I only refer to the spirit of socialism and communism, which is so rife in many quarters, to say that our system of

written constitutions is one of the great safeguards against the dangerous growth of these elements in our social condition. They have served to keep in the foreground and close to the thought of the people the things which enter into a true conception of civil liberty, and a lively and constant sense of the priceless value placed by the fathers upon the rights in which it consists. These declarations in the organic law are barriers of inestimable value against anarchy and disorder, and when wild schemes of legislation, subversive of personal rights and inconsistent with the proper function of government, are broached, the answer of the Constitution has hitherto been, and hereafter will be, I think, accepted. We cannot assume that labor has no wrongs to be redressed, or that greed and avarice have no tendencies which should be restrained. The agitations which are going on in society cannot safely be ignored or set aside as unworthy of attention. It is the duty of the statesman and of the student of social problems, to patiently investigate the causes of the unrest which pervades large classes in our community, and to ascertain whether there are real grievances which require correction. Society is not to be destroyed, nor is social order to succumb to anarchy. Life, liberty and property secured by law are to remain, the most valuable and precious of our possessions, and when the time shall come, as it surely will, when the dangers which now menace our social order shall have passed away, the value of our written constitutions as a factor in keeping the great mass of people true to fundamental principles, will come more and more to be recognized and appreciated.

The preservation of social order in America will depend largely upon the influence which shall be exerted by the members of the learned professions. The dangers which threaten society in this country, spring in no small degree from the very excess of our prosperity, and the broader life which under our institutions is opened to all classes in the community. In no country is labor so well rewarded. Free schools have raised the grade of general intelligence. Improved conditions beget wants and aspirations among the industrial classes, which are

elsewhere unknown. None are content to be confined to the ranks of mere labor. All hope and strive for better conditions. This restless spirit, it cannot be denied, has its disadvantages. It excites discontent and an unwillingness to submit to limitations imposed by necessary and irreversible conditions. The problem is to so guide the surging activities of our time, that while on the one hand the spirit of progress shall not be unduly repressed, on the other it shall not stand as an excuse for lawless license or make men unwilling to recognize those distinctions which have their root in the ineffaceable differences in individual capacity and character.

In working out the social problems which are confronting us, and in shaping our legislation to meet the new exigencies which threaten our security, the members of the legal profession will of necessity take a leading part. The great questions which occupied the attention of the great lawyers of the antebellum period and of the period immediately succeeding, have been settled. The right of the people to protection against arbitrary power, for which they contended, is no longer questioned, and the principles of civil liberty were by their exertions established in the organic law of the state. Whether our government shall continue to be administered in the spirit of the Constitution, and the orderly and regular progress of society secured by adherence to fundamental principles, will largely depend on the character of the legal profession. It cannot be doubted I think, that of late years there has been a tendency to a lower standard of professional life. The profession of the law has been thrown open to men not fitted by education or character to discharge its duties. The practice of the law has become more and more a mere business, and the learning and dignity of the profession has been affected by an undue tendency to use its opportunities as a mere means of securing a fortune. But while the great subjects which engrossed the attention and inspired the efforts of the early generation of lawyers, are no longer living and vital questions, it was never more important than now that the lofty spirit, the patriotic

purpose and sense of public duty which animated them, should be the controlling forces in guiding the conduct of our profession.

The establishment at this seat of learning of a school for the training of young men in the science of law, is an important step in the effort to elevate the character of the profession. The best work requires a high ideal. The stimulating atmosphere of a great University is an important element in the attainment of the best results of education. I cannot forbear to congratulate the Law School of Cornell University that among its able faculty is enrolled a jurist distinguished for his rare and accurate learning, who has consented, when his judicial work is ended, to devote his time to this department, and like the juris-consults of Rome, after having passed the active period of his professional and judicial life, to give his eminent talents to the work of illustrating the science of jurisprudence.

